Gruma Corporation d/b/a Mission Foods and United Food and Commercial Workers Union, Local 99.[1] Case 28–CA–20161

August 27, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on February 16, 2005, the General Counsel issued the complaint on March 18, 2005, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 28–RC–5987. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint.

On April 5, 2005, the General Counsel filed a Motion for Summary Judgment and Motion to Supplement its Summary Judgment Motion. On April 11, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion for summary judgment should not be granted. The Respondent filed a response, and the General Counsel filed a reply brief.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but contests the validity of the Union's certification based on its objections to the election in the representation proceeding. In addition, the Respondent asserts that there are genuine issues of material fact as to the relevance and necessity of some of the information requested by the Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).[2]

We also find that there are no factual issues warranting a hearing with respect to most of the items in the Union's request for information. By letter dated December 2, 2004, the Union requested certain information from the Respondent, listed in 107 paragraphs. (See Appendix A). In its response to the Notice to Show Cause, the Respondent raises several defenses to its failure to provide the requested information, which are addressed below.

1. Harassment and bad faith.

The Respondent argues that the Union's purpose in requesting such voluminous information is a harassment tactic, and that because the request was not made in good faith, it should be denied, citing *Hawkins Construction Co*., 285 NLRB 1313, 1314 (1987), enfd. denied on other grounds 857 F.2d 1224 (8th Cir. 1988) (a request for information must be made in good faith, otherwise, it may be denied). However, in *Hawkins*, the Board also held that there is a presumption that a union acts in good faith when it requests information from an employer, until the contrary is shown. Id. at 1314. Here, the Respondent's sole argument supporting its contention is the volume of the Union's information request. This assertion, without more, is insufficient to overcome the presumption of good faith, particularly in light of the fact that most of the Union's information request on its face appears to involve relevant information requested to fulfill its role as collective-bargaining agent. See, e.g., *Honda of Hayward*, 314 NLRB 443, 449 (1988) (length of union's 24-page information request did not indicate bad faith, given the need for extensive information to prepare for initial bargaining).

2. Overbroad and burdensome.

The Respondent contends that the information requested in paragraphs 6, 13–14, 37, 39–40, 42, 46–47, 57, 75, 79–81, 84–86, 89, 99, and 102–103 is overly broad and unduly burdensome to produce. The Respondent argues generally that in some instances the Union

[1] We have amended the caption to reflect the disaffiliation of the United Food and Commercial Workers from the AFL–CIO effective July 29, 2005.

[2] Chairman Battista did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding concerning the Union's certification or reconsideration of the decision in the representation proceeding, and that summary judgment is therefore appropriate.

does not provide a time period for the particular information sought, but rather requests the information for any period of time that the Respondent has been operating. The Respondent further argues that it would have to go through each individual employee's file to determine whether the information exists, and that such a task would be unduly burdensome given the number of employees involved.

The Respondent's failure to raise, at the time of the request, any issue concerning the possible burden of complying with the Union's request undermines its claim of burdensomeness as a defense. See, *Honda of Hayward*, 314 NLRB at 450, citing *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 353 fn. 6 (D.C. Cir. 1983) (if a party "does wish to assert that a request for information is too burdensome, this must be done at the time information is requested, and not for the first time during the unfair labor practice proceeding.")

In addition, the Board has held that "an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply with the request to the extent that it encompasses necessary and relevant information." *Superior Protection Inc*., 341 NLRB No. 35, slip op. at 3 (2004), enfd. 401 F.3d 282 (5th Cir. 2005). See also *Streicher Mobile Fueling, Inc*., 340 NLRB No. 116, slip op. at 2 (2003), affd. 2005 WL 1395063 (11th Cir. 2005) (unpublished).

Further, although the Board and courts have held that there are some acceptable limits on information requests that would otherwise entail an undue burden, the onus is on the employer to show that production of the data would be unduly burdensome, and to offer to cooperate with the union in reaching a mutually acceptable accommodation. See, e.g., *Yeshiva University*, 315 NLRB 1245, 1248 (1994); *United States Testing Co. v. NLRB*, 160 F.3d 14, 20–21 (D.C. Cir. 1998); *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1094 (1st Cir. 1981), abrogated on other grounds *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 786 fn. 7 (1990). Here, the Respondent has failed to proffer any evidence in support of its assertion that the information requests would be unduly burdensome, and has not made any effort to reach a mutually acceptable accommodation with the Union. Accordingly, we find that the assertion that the information request was overbroad and burdensome does not excuse the Respondent's failure to comply with the request.[3]

3. Pertaining to nonunit employees

The Respondent maintains that much of the information sought by the Union is not relevant and or necessary to its collective-bargaining duties. Specifically, the Respondent alleges that the information requested in paragraphs 2-3, 5, 7–8, 10, 14–20, 27, 29–30, 37–40, 42, 46–47, 57, 61, 63, 71–72, 75, 79–81, 85–86, 88–89, 93–94, 100, 102–103, and 106 pertains to nonunit employees and therefore is not presumptively relevant to mandatory subjects of bargaining.

It is well established that although a union's information request may not be specifically limited to bargaining unit employees, and therefore could be construed as requesting information pertaining to nonunit as well as unit employees, this does not justify an employer's blanket refusal to comply with the union's request. See *Streicher Mobile Fueling*, 340 NLRB No. 116, slip op. at 2 (failure to limit request to bargaining unit information did not excuse noncompliance with request as to unit employees); *Superior Protection Inc*., 341 NLRB No. 35, slip op. at 3 (employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply to the extent it encompasses necessary and relevant information).

In such cases, the Board will construe the requests that seek presumptively relevant information as pertaining to unit employees, even though the information requested is not consistently described in these specific terms. See e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802 fn. 2 (2003) (partial denial of summary judgment on information request did not excuse failure to provide other, clearly relevant, information, which Board construed to pertain to unit employees); *Freyco Trucking Inc*., 338 NLRB 774 fn. 1 (2003) (request for payroll records and benefit fund payments construed to pertain to unit employees).

Accordingly, we find that the assertion that the information request pertained to nonunit employees does not excuse the Respondent's failure to comply with the request to the extent that it could be construed to pertain to unit employees.[4]

[3] In par. 80 of the information request, the Union seeks a list of all employees who have engaged in conduct for which discipline was considered, but ultimately not imposed, including the name of the employees, the date of the incidents, the nature of the discipline considered, and the reason discipline was not imposed. To the extent that the Respondent does not keep records of certain types of information, it is not obligated to produce such information.

Further, pars. 13–14, 37, 39–40, 42, 46–47, 57, 75, 79–81, and 84–86, do not specify a time period for which the information is sought. Consistent with other paragraphs of the Union's request, we shall require the Respondent to provide the requested information for a period of 1 year prior to the date of the request, unless the Union can demonstrate why a longer period of time is necessary to the performance of its duties as the collective-bargaining representative of the unit employees.

[4] In pars. 57, 75, and 79 of the information request, the Union seeks information concerning either "any employee" or "all employees" who

4. Nonmandatory subjects of bargaining.

The Respondent contends that the Union seeks information that does not pertain to mandatory subjects of bargaining, and therefore is not relevant or necessary to the collective-bargaining process. Specifically, the Respondent maintains that it does not have an obligation to provide the information requested in paragraphs 9, 11, 15–20, 22, 25–26, 31–34, 43, 53–56, 64, 66, 71, 73, 81, 91, 99–100, 102–103, and 106.

Information that relates to wages, hours, and terms and conditions of employment of the unit employees is presumptively relevant. See, e.g., *Crowley Marine Services*, 329 NLRB 1054, 1060 (1999), enfd. 234 F.2d 1295 (D.C. Cir. 2000). It is well established that most of the types of information sought by the Union here are presumptively relevant for purposes of collective bargaining and must be furnished on request.[5] See, e.g., *Metro Health Foundation, Inc.*, supra.; *Honda of Hayward*, 314 NLRB at 443, 450, 452 (workers' compensation carrier; health care plan administrator; company policy with respect to use of proprietary information; IRS form 5500); *Maple View Manor, Inc*., 320 NLRB 1149, 1150 (1996) (merit pay evaluations); *Hamilton Rehabilitation & Healthcare Center*, 325 NLRB 1217 (1998) (total assets of 401(k) plan, its performance records, all actuarial information and summary plan descriptions, and number and names of each participant); *Polymers, Inc.*, 319 NLRB 26, 27 (1995) (EEO-1 reports).

However, we find that the General Counsel has failed to establish that certain information sought in the Union's information request is presumptively relevant**.** Paragraph 15 seeks a list of all local, state, and federal laws, statutes, ordinances, or regulations that the Respondent believes govern its business operations; paragraph 16 seeks a list of all notices required by state or federal law to be posted in the workplace; and paragraph 17 seeks a copy of all company policies that relate to any of these laws.

In *Living and Learning Centers, Inc*., 251 NLRB 284, 285 and fn. 2 (1980), enfd. 652 F.2d 209 (1st Cir. 1981), the Board found a request for a list of all state agencies and statutes governing an employer's operations "as a day care center" to be presumptively relevant. Such agencies and statutes obviously concern the health and safety matters that are peculiar to such an institution. The employees working there have a presumptive interest in such matters. By contrast, there is no such limitation here. The Respondent is a manufacturer of food products, and the request is not confined to this particular kind of business. Thus, we find that the requests in paragraphs 15, 16, and 17, are not presumptively relevant, and that the General Counsel has failed to establish such relevance.[6]

were disciplined for certain infractions. By construing the Union's requests to pertain only to unit employees, these paragraphs duplicate par. 6, which seeks copies of all disciplinary records of actions taken against unit employees for the past year. Accordingly, the Respondent is not obligated to produce any information in response to pars. 57, 75, and 79, to the extent that such information is duplicative of information provided in response to par. 6. Further, in paragraph 14, the Union seeks a copy of the attendance record of any employee who has been late, tardy, or absent, and has not been disciplined. As with other requests in this section, we construe this request to pertain only to unit employees, and note that to the extent that the Respondent does not keep records concerning employees who were not disciplined, it is not obligated to produce such information.

[5] Par. 102 seeks a list of all employees hired within the last 5 years, and certain information concerning them. The General Counsel suggests that the information provided should be limited to current employees, dating from the date of the election on August 23, 2001. We agree that the information should be so limited. Further, the Respondent need not provide information in response to par. 106 to the extent that it is duplicative of information provided in response to other paragraphs of the request.

[6] Because we find that the General Counsel has not established the presumptive relevance of these paragraphs of the information request, we do not find that the Respondent unlawfully failed to comply with the request. We do not base our denial of summary judgment as to these paragraphs on any finding that the Union's request was overbroad. As our colleague notes, only where an information request is shown to include relevant and necessary information is overbreadth not a defense to a blanket refusal to comply. Here, the General Counsel has not established presumptive relevant and thus we do not find that the Respondent was under an obligation to request clarification or provide some information.

Member Liebman dissents with respect to the majority's failure to order the Respondent to provide the additional information requested in pars. 15 (all local, state, and federal laws governing the operation of the business), 16 (notices required by law to be posted in the workplace), and 17 (company policies relating to the laws referred to above).

With respect to pars. 15 and 17, Member Liebman is not persuaded by her colleagues' attempt to distinguish *Living and Learning Centers*, which held presumptively relevant a similar request for "a listing of all state agencies and statutes which govern operations at Living and Learning, Inc., as a day care center." Unlike the majority, Member Liebman does not read the Board's decision in *Living and Learning Centers* as restricted to "day care centers." That phrase merely described the kind of business in which that particular employer was engaged and was not a limitation on the Board's holding. Further, the interest that the majority acknowledges that employees working in a day care center have in matters of health and safety applies with equal force to the employees of the Respondent who are engaged in the manufacture of food products. Finally, even if the the information sought in pars. 15 and 17 is broader than the information requested in *Living and Learning Centers*, the Respondent's blanket refusal to comply with the Union's request still would not be justified. "[A]n employer may not simply refuse to comply with a[n] . . . overbroad information request, but must request clarification or comply with the request to the extent that it encompasses necessary and relevant information." *Superior Protection*, supra, 341 NLRB No. 35, slip op. at 3.

With respect to the information sought in par. 16, it is well established that the NLRA should not be construed in isolation, but must be considered in light of other relevant statutory schemes. See *Southern Steamship Co. v. NLRB*, 316 U.S. 31, 47 (1942). Employment-related

Paragraphs 18–20, 71, and 100 seek information concerning citations, indictments, criminal complaints, civil lawsuits, or charges involving discrimination filed against the Respondent in the last 5 years, including a list of all employees who were involved in the charges, and the names of all employees who have been charged or convicted of any criminal offense. In prior cases, the Board has held that information concerning certain types of lawsuits is not presumptively relevant. See, e.g., *Maple View Manor*, 320 NLRB at 1151 (sexual harassment or discrimination charges not presumptively relevant); *Polymers, Inc.*, 319 NLRB 26, 27 (1995) (charges and complaint filed against company by employees not presumptively relevant). With respect to information about other types of citations, indictments, criminal complaints, civil lawsuits, or charges, although it may be possible to establish a reason why such information is relevant, the Board has not found that it is presumptively so. See, e.g., *Honda of Hayward*, 314 NLRB at 452 (*probable* relevance of lawsuits filed against employees by third parties was established by the General Counsel). In the present case, we find that the General Counsel has failed to establish that the information sought in paragraphs 18–20, 71, and 100 is presumptively relevant.

Paragraph 43 seeks the name of each supervisor, manager, or other person who was involved in each merit pay evaluation. Information concerning merit pay systems and evaluations that lead to merit pay is presumptively relevant. See, e.g., *Maple View Manor*, 320 NLRB at 1150–1151. However, the General Counsel has not established that the names of the individuals involved with such evaluations are presumptively relevant. Further, paragraph 91 requests a copy of any employment application form currently used by the employer, and paragraph 99 requests copies of all materials that have been posted on company bulletin boards during the last year. The Board has not passed on whether employment application forms or material posted on bulletin boards are presumptively relevant, and thus we find it inappropriate to grant summary judgment.[7]

Accordingly, we deny the General Counsel's motion on the information requests in paragraphs 15–16, 18–20, 43, 71, 91, and 99–100**,** and remand these issues to the Regional Director for further appropriate action.

5. *Proprietary, confidential or privileged.*

The Respondent contends that some of the information sought by the Union is proprietary, confidential, or privileged. Specifically, the Respondent alleges that the information requested in paragraphs 27, 46–47, 53–54, 63, 65, 67, 72, and 93–94 are confidential or privileged, and therefore should not be produced. In addition, the Respondent notes that in paragraph 1, the Union seeks the employees' social security numbers, which the Respondent is under no obligation to disclose, citing *Excel Fire Protection*, 308 NLRB 241 (1992). Finally, the Respondent contends that a hearing is necessary to balance the Union's need for the information against the confidentiality interests of the Respondent and its employees, citing *Detroit Edison v. NLRB*, 440 U.S. 301 (1979).

The Board has held that employee social security numbers are not presumptively relevant and that the Union must therefore demonstrate the relevance of such information. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB at 803 fn. 2, and cases cited therein. The Union has not provided any reason why it needs the employees' social security numbers. Accordingly, we deny the motion for summary judgment with respect to the Respondent's alleged failure to provide this information, and remand this issue to the Regional Director for further appropriate action.

With respect to the other information that the Respondent contends is confidential or privileged, it is well settled that in certain situations, confidentiality claims may justify a refusal to provide information. See, e.g., *Crittenton Hospital*, 342 NLRB No. 67, slip op. at 10–11 (2004). In that case, the Board recognized that when a confidentiality claim has been raised, the trier of fact must balance the union's need for the information sought

information that state and federal laws require an employer to disclose to bargaining unit employees clearly relate to their working conditions. Therefore, such information is presumptively relevant and necessary for collective bargaining.

[7] Member Liebman finds it unnecessary to pass on the issue whether the employment application form requested in par. 91 is presumptively relevant. She observes that, as the General Counsel points out, the Respondent has failed to raise any specific issue of material fact regarding the Union's broad request in par. 101 for "company policies or procedures related to the hiring process." In Member Liebman's view, the Respondent's obligation to provide the more extensive information specified in par. 101 encompasses the limited information requested in paragraph 91.

Member Liebman dissents with respect to the majority's failure to order the Respondent to provide the information requested in paragraph 99, i.e., "[c]opies of all materials which have been posted on . . . bulletin boards during the last year." It has long been held that "bulletin board use [is] among those 'conditions of employment' which the Act requires to be the subjects of collective bargaining." *NLRB v. Proof Co.*, 242 F.2d 560, 562 (7th Cir. 1957). Further, although there is no statutory right of employees or a union to use an employer's bulletin board, "where, by policy *or practice*, the company permits employee access to bulletin boards for any purpose, section 7 of the Act . . . secures the employees' right to post union materials." *Union Carbide Corp. v. NLRB*, 714 F.2d 657, 660 (6th Cir. 1983) (emphasis added). Accordingly, Member Liebman would find that the information sought in par. 99, which is necessary to determine whether such a practice existed at the Respondent's facilities, is presumptively relevant for purposes of collective bargaining.

against the legitimate confidentiality interests of the employer. Id. However, the confidentiality claim must be timely raised and proven before the balancing test is triggered, and a blanket claim of confidentiality will not satisfy the respondent's burden of proof. Id.

In addition, it is well settled that "[a]n employer is not relieved of its obligation to turn over relevant information simply by invoking concerns about confidentiality, but must offer to accommodate both its concern and its bargaining obligations, as is often done by making an offer to release information conditionally or by placing restrictions on the use of that information." *U.S. Testing Co., Inc. v. NLRB*, 160 F.3d 14, 20 (D.C. Cir. 1998). Here, the Respondent has only asserted a blanket claim of confidentiality, and has not established why particular information would trigger specific confidentiality concerns. In addition, the Respondent has not made any offer to accommodate the Union's legitimate interest in relevant information. Accordingly, with the exception of employees' social security numbers, we find that the assertion that the information request seeks information that is confidential does not excuse the Respondent's failure to comply with the request.

6. Conclusion

Accordingly, we grant the Motion for Summary Judgment and order the Respondent to bargain with the Union and to furnish the Union with the information it requested, with the exception of employee social security numbers; a list of all local, state, and federal laws, statutes, ordinances, or regulations that the Respondent believes govern its business operations; a copy of all company policies that relate to any of these laws; a list of all notices required by state or federal law to be posted in the workplace; information concerning citations, indictments, criminal complaints, civil lawsuits, or charges involving discrimination filed against the Respondent in the last 5 years, including a list of all employees who were involved in the charges, and the names of all employees who have been charged or convicted of any criminal offense; a list of the name of each supervisor, manager, or other person who was involved in each merit pay evaluation; employment application forms; and copies of all materials that have been posted on company bulletin boards.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Arizona corporation with an office and place of business located at 5860 South Ash Avenue, Tempe, Arizona (the Respondent's facility), has been engaged in the manufacture of food products such as tortillas and chips.

During the 12-month period ending February 16, 2005, the Respondent, in conducting its business operations described above, purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Arizona.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that United Food and Commercial Workers Union, Local 99(the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held August 23, 2001, the Union was certified on November 22, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time TQ techs, sanitation techs, receivers, customer service reps, mechanics, production operators, production packers, production sweepers, production ingredients, production maseca dumpers employed by the Respondent at its facilities located at 5860 South Ash Avenue, Tempe, Arizona, and all full-time and regular part-time warehousemen employed by the Respondent at its facilities located at 840 West Carver Road, Tempe, Arizona; but excluding all other employees, office clericals, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about February 11, 2005, the Union, by letter to the Respondent and its counsel, requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the certified unit.

Since on or about February 11, 2005, the Respondent has failed and refused to bargain with the Union. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

On or about December 2, 2004, the Union, by letter, requested that the Respondent furnish it with specific information.

The information requested by the Union, except as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since on or about December 2, 2004, the Respondent has failed and refused to furnish the Union with the information requested by the Union.

CONCLUSION OF LAW

By refusing since December 2, 2004 to furnish the Union with requested information, and by refusing since February 11, 2005 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested, with the exception of employee social security numbers; a list of all local, state, and federal laws, statutes, ordinances, or regulations that the Respondent believes govern its business operations; a copy of all company policies that relate to any of these laws; a list of all notices required by state or federal law to be posted in the workplace; information concerning citations, indictments, criminal complaints, civil lawsuits, or charges involving discrimination filed against the Respondent in the last 5 years, including a list of all employees who were involved in the charges, and the names of all employees who have been charged or convicted of any criminal offense; a list of the name of each supervisor, manager, or other person who was involved in each merit pay evaluation; employment application forms; and copies of all materials that have been posted on company bulletin boards.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Gruma Corporation d/b/a Mission Foods, Tempe, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local 99, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time TQ techs, sanitation techs, receivers, customer service reps, mechanics, production operators, production packers, production sweepers, production ingredients, production maseca dumpers employed by the Respondent at its facilities located at 5860 South Ash Avenue, Tempe, Arizona, and all full-time and regular part-time warehousemen employed by the Respondent at its facilities located at 840 West Carver Road, Tempe, Arizona; but excluding all other employees, office clericals, guards, and supervisors as defined in the Act.

(b) Furnish the Union with the information requested by the Union in its letter dated December 2, 2004, with the exception of employee social security numbers; a list of all local, state, and federal laws, statutes, ordinances, or regulations that the Respondent believes govern its business operations; a copy of all company policies that relate to any of these laws; a list of all notices required by state or federal law to be posted in the workplace; information concerning citations, indictments, criminal complaints, civil lawsuits, or charges involving discrimination filed against the Respondent in the last 5 years, including a list of all employees who were involved in the charges, and the names of all employees who have been charged or convicted of any criminal offense; a list of the name of each supervisor, manager, or other person who was involved in each merit pay evaluation; employment application forms; and copies of all materials that have been posted on company bulletin boards.

(c) Within 14 days after service by the Region, post at its facilities in Tempe, Arizona, copies of the attached notice marked "Appendix B."[8] Copies of the notice, on

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "posted by order of the national labor relations board" shall read "posted pursuant to a judgment of the

forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 2, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 27, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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united states court of appeals enforcing an order of the national labor relations board."